

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA	§ CASE NOS. 7:21-PO-00001
	§ 7:21-PO-00002
	§ McALLEN, TEXAS
VERSUS	§ FRIDAY,
	§ SEPTEMBER 10, 2021
EDUARDO LEAL	§ 3:39 P.M. TO 4:33 P.M.

BENCH TRIAL

BEFORE THE HONORABLE J. SCOTT HACKER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:	SEE NEXT PAGE
COURTROOM ERO:	SANDRA A. SILVA
OFFICIAL INTERPRETERS:	CHRISTINA HELMERICHS WOODY LEWIS

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APPEARANCES:

FOR THE UNITED STATES OF
AMERICA:

OFFICE OF THE US ATTORNEY
Devin V. Walker, Esq.
1701 W. Business Hwy. 83
Suite 600
McAllen, TX 78501
956-992-9365

FOR DEFENDANT EDUARDO LEAL:

FEDERAL PUBLIC DEFENDERS OFC
Christopher G. Gonzalez, Esq.
1701 W. Business Hwy. 83
Suite 450
McAllen, TX 78501
856-630-2995

ALSO PRESENT:

Romeo Garcia, Witness

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1 HOUSTON, TEXAS; FRIDAY, SEPTEMBER 10, 2021; 3:39 P.M.

2 THE COURT: All right. I'm calling 21-PO-001 and
3 21-PO-002, the United States versus Eduardo Leal.

4 MS. WALKER: Good afternoon, Your Honor. Devin
5 Walker on behalf of the United States. Present and ready to
6 proceed.

7 MR. GONZALEZ: Good afternoon, Your Honor. Chris
8 Gonzalez for Mr. Leal, present and ready to proceed.

9 THE COURT: All right. Mr Leal, would you please
10 come up.

11 And like I said, I know we still got concerns with
12 COVID, whatever you two feel comfortable with as far as
13 spacing, at least feel --

14 MR. GONZALEZ: Thank you, Your Honor.

15 THE COURT: All right. I assume the bench trial is
16 still on since we --

17 MR. GONZALEZ: Yes, Your Honor. Yes, Your Honor, I
18 believe the Government has an announcement as to one of the
19 two violations that are charged, and they may want to move to
20 amend the charge that the Government's proceeding on. But I
21 will leave that to Ms. Walker.

22 THE COURT: All right. Ms. Walker?

23 MS. WALKER: Yes, Your Honor, the Government would
24 move to dismiss the 16 USC 703 violation. We'll be proceeding
25 solely on 16 USC 668dd. We would also amend that offense

1 description to include the taking of bird feathers and salt.

2 THE COURT: Taking of bird feathers?

3 MS. WALKER: Yes, Your Honor.

4 THE COURT: And salt?

5 MS. WALKER: Yes, Your Honor.

6 THE COURT: Now you said the offense under 16 USC
7 703, it looks like to me that's Case 21-PO-02, you're moving
8 to orally dismiss it?

9 MS. WALKER: Yes, Your Honor.

10 THE COURT: Any objection, Mr. Gonzalez?

11 MR. GONZALEZ: No objection, Your Honor.

12 THE COURT: All right. That'll be granted. Now I
13 assume it's dismissal without prejudice?

14 MS. WALKER: Yes, Your Honor.

15 THE COURT: All right. Now Case Number 21-PO-01,
16 amending the complaint to taking -- I'm sorry, how did you
17 phrase that, because I did some shorthand, now I can't read my
18 writing.

19 MS. WALKER: Yes, Your Honor, we would just move to
20 amend the complaint to include, in addition to the other items
21 already listed in the complaint, to include bird feathers and
22 salt.

23 THE COURT: Okay. Any objection, Mr. Gonzalez?

24 MR. GONZALEZ: No objection, Your Honor.

25 THE COURT: All right. The Court will grant the

1 amendment.

2 Any other announcements from the Government?

3 MS. WALKER: No, Your Honor.

4 THE COURT: Mr. Gonzalez?

5 MR. GONZALEZ: No announcement, Your Honor.

6 THE COURT: All right. Ms. Walker, you can call
7 your first witness.

8 MS. WALKER: Yes, Your Honor, the United States will
9 all Officer Romeo Garcia.

10 THE COURT: Do you want to give an opening
11 statement? I think I technically have to ask you that, even
12 though it's a bench trial.

13 MS. WALKER: We'll waive it, Your Honor.

14 THE COURT: Do you want to give one, Mr. Gonzalez?

15 MR. GONZALEZ: Your Honor, I would like to.

16 THE COURT: Okay.

17 MR. GONZALEZ: And I would also -- I've already
18 tendered to the Government exhibits, defense exhibits. The
19 Government has no objection to them. They're actually just
20 legal resources for the Court to take into consideration. I
21 believe it would be useful to the Court in assessing the
22 evidence.

23 So if I may approach and introduce these four
24 exhibits, Your Honor?

25 THE COURT: How many exhibits are there?

1 MR. GONZALEZ: There's four exhibits.

2 THE COURT: Numbered Defendant's Exhibits 1, 2, 3,
3 and 4?

4 MR. GONZALEZ: Yes, Your Honor, I have them labeled.

5 THE COURT: No objection, Government?

6 MS. WALKER: No, Your Honor.

7 THE COURT: All right. They're admitted into the
8 Record.

9 (Defendant's Exhibit Nos. 1 through 4 received into
10 evidence.)

11 MR. GONZALEZ: May I approach, Your Honor?

12 THE COURT: Sure.

13 (Pause in the proceedings.)

14 THE COURT: All right. Thank you.

15 MR. GONZALEZ: And may I proceed with an opening,
16 Your Honor?

17 THE COURT: Yes.

18 OPENING STATEMENT ON BEHALF OF DEFENDANT

19 MR. GONZALEZ: The only reason why I did not want to
20 waive an opening is because it looks like in this case, Your
21 Honor, the Government and the defense may disagree regarding
22 the legal standard the Court would be applying in assessing
23 the evidence here.

24 THE COURT: All right.

25 MR. GONZALEZ: The Court is looking at -- I'm

1 referencing here at Defense Exhibit 1, this is the charge that
2 the Government is proceeding on, Your Honor. Not under the
3 Migratory Bird Act. It is under this sort of resource
4 management program administration. If the Court goes to
5 Page 4 of Defense Exhibit 1, it has essentially the statute
6 that creates a criminal offense here, and it's been
7 highlighted for Your Honor on subsection (c).

8 THE COURT: All right.

9 MR. GONZALEZ: It provides that -- in basic terms it
10 just says that you can't remove personal property of the US on
11 a US refuge. And then I've highlighted where it says, "Unless
12 such activities are permitted, either under subsection (d) of
13 this section or by express provision of law, proclamation,
14 executive order or public land order establishing the area or
15 amendment thereof."

16 So part of an element of this offense, Your Honor,
17 is that -- at least our position is the Government will have
18 to negate that any taking here was permitted. And they have
19 to establish it was prohibited under subsection (d) or any
20 executive order.

21 If the Court flips over to Page 5, subsection (d)
22 provides use of areas and it states that the Secretary is
23 authorized to permit the use of any area within the system for
24 any purpose including but not limited to hunting, fishing,
25 public recreation, and accommodations, and access whenever he

1 determines, the Secretary determines that such uses are
2 compatible with the major purposes for which the areas were
3 established.

4 Your Honor, regarding compatibility, if the Court
5 flips over a couple of pages to 7, subsection (e) of this
6 section, it contemplates a conservation plan, a refuge
7 conservation plan, and it requires the Secretary to propose
8 and essentially to effectuate a Comprehensive Conservation
9 Plan for each refuge. The Sal del Rey has that plan, Your
10 Honor. And that plan -- let me back up.

11 On Page 7, so this section contemplates that a plan
12 should be promulgated to govern conservation activities on the
13 refuge. If the Court flips over to Page 8 of the law,
14 Subdivision 2 provides that in developing each Comprehensive
15 Conservation Plan the Secretary shall identify and describe
16 several things in this plan. Subsection (f) here is the
17 opportunity for compatible wildlife-dependant recreational
18 uses.

19 The Sal del Rey has such a plan, Your Honor, and
20 we've -- it's Defense Exhibit Number 2.

21 THE COURT: All right.

22 MR. GONZALEZ: Defense Exhibit Number 2 is Page 55.
23 The Court has the cover page, it was promulgated back in the
24 '90s, Your Honor. I'm not sure if it's been renewed, but this
25 is the refuge plan for our area, and Page 55, if the Court

1 flips to the second page of Defense Exhibit 2, it's 5.5 of the
2 plan, it provides a public use, recreation and wildlife
3 interpretation and education.

4 If the Court looks at Goal Number 2, Goal Number 2
5 is to offer compatible wildlife-dependent public access and
6 recreational opportunities on tracts of the Lower Rio Grande
7 Valley that result in furthering the public's appreciation of
8 the Lower Rio Grande Valley area, of ecological concern and
9 the National Wildlife Refuge system. It says, "This will be
10 done by the provision of wildlife observation, photography,
11 fishing and hunting, recreational opportunities in accordance
12 with Executive Order 12996."

13 THE COURT: Where are you reading that at, I mean --

14 MR. GONZALEZ: I'm reading on Page 55, Defense
15 Exhibit 2, Your Honor.

16 THE COURT: Okay.

17 MR. GONZALEZ: It's -- the Court has two pages --

18 THE COURT: I see where, you had it highlighted.

19 MR. GONZALEZ: Okay.

20 THE COURT: Go ahead.

21 MR. GONZALEZ: And, Your Honor, I'm almost done
22 here, but I think this will help the Court to analyze the
23 issue here. But Footnote 37 is really important. This is the
24 Sal del Rey plan. It establishes recreational uses are
25 considered compatible when they do not materially detract from

1 or interfere with the purposes for which the refuge is
2 established.

3 And, Your Honor, Exhibit Number 3, Defense Exhibit
4 Number 3, if the Court turns the page, is the executive order
5 of President Clinton in the '90s signing, which is referenced
6 in the Sal del Rey plan. And it essentially promotes
7 interaction with the environment, fostering wildlife and
8 recreational activities.

9 And so the point I'm trying to make here, Your
10 Honor, is it's not as cut and dried to establish a violation
11 here simply by saying, "Well, these items Mr. Leal had in his
12 possession, he took them and the sign said you weren't
13 supposed to take them." It may be that he wasn't following
14 rules, but the question is whether a violation of federal law
15 occurred. And the federal law references executive orders, by
16 implication it references plans that are vague in nature, Your
17 Honor.

18 And I think it's going to come down to a question
19 whether what Mr. Leal did materially disrupted -- it's
20 under -- it's on Footnote 37, materially disrupted or
21 interfered with the purpose of the refuge. And I know the
22 Government may have arguments to the contrary, but I wanted to
23 offer that opening statement as the Court looked -- or listens
24 to the evidence.

25 THE COURT: All right.

1 MR. GONZALEZ: Thank you. I have nothing further.

2 THE COURT: Ms. Walker?

3 MS. WALKER: Your Honor, the Government will call
4 Officer Garcia.

5 THE COURT: All right. Officer Garcia, would you
6 please raise your right hand and take an oath before the
7 Court.

8 (Witness sworn.)

9 THE COURT: All right. Please be seated.

10 Government, you can proceed with your line of
11 questioning.

12 MS. WALKER: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. WALKER:

15 Q Good morning -- good afternoon, Officer Garcia. Could
16 you please state your name and occupation?

17 A Romeo Garcia, Senior Federal Wildlife Officer.

18 Q And who are you employed with?

19 A The US Fish and Wildlife Service.

20 THE COURT: And hold on. Do you -- is the seat okay
21 with you?

22 INTERPRETER LEWIS: It's fine, Your Honor.

23 THE COURT: Okay. I just want to make sure.

24 INTERPRETER LEWIS: I just want to try to get in the
25 right mind so that the Defendant can hear.

1 THE COURT: I want to make sure he can, that's why
2 I -- if you need the process to slow down a little bit,
3 Mr. Lewis --

4 INTERPRETER LEWIS: No, it's fine.

5 THE COURT: -- please let us know.

6 INTERPRETER LEWIS: Yeah.

7 THE COURT: Go ahead, Mr. Walker -- Ms. Walker.

8 MS. WALKER: Thank you, Your Honor.

9 BY MS. WALKER:

10 Q How long have you been employed with Fish and Wildlife?

11 A A little over 11 years.

12 Q And at Fish and Wildlife what are some of your job
13 duties?

14 A So my duties, they vary depending on the time of the
15 year. As an officer I do in hunting season, you know, hunting
16 compliance checks on some of the current hunts that we have on
17 federal land; on the coast, fishing compliance checks. Some
18 of the main duties too, you know, is to make sure that the --
19 all the visitors on our national wildlife refuge, they're
20 safe.

21 Some of my duties also is to patrol all the little
22 parcels of land that we have scattered all the way from the
23 Boca Chica Beach west to the (indiscernible) in north to Sal
24 del Rey in the area a little south of the Checkpoint. We
25 protect the habitat. I do a lot of investigation for poaching

1 cases, I walk a lot of fence line and most importantly protect
2 the visitors from the wildlife or protecting the wildlife from
3 the visitors or protecting some of the visitors from other
4 humans on the area.

5 Q As part of some of your job duties do you also enforce
6 federal laws?

7 A Yes, I do.

8 Q Okay. And drawing your attention to October 18 of 2020
9 were you working on that day?

10 A Yes, ma'am.

11 Q And where were you working?

12 A That Sunday I headed out to the area of Sal del Rey
13 National Wildlife Refuge. Along the area we have some other
14 refuge tracts, (indiscernible) on County Road 1020 and 30.
15 Some of those are refuges at the time we're opening -- we're
16 open for hunting. So I was conducting hunting compliance
17 checks, I was investigating poaching, I was making contact
18 with hunters, and at the same time Sal del Rey is open to the
19 public, so I was making contact with visitors.

20 MS. WALKER: May I approach, Your Honor?

21 THE COURT: Yes.

22 (Pause in the proceedings.)

23 BY MS. WALKER:

24 Q Officer, I'm handing you what's been marked as Government
25 Exhibit 1.

1 A Okay.

2 (Government Exhibit No. 1 identified.)

3 BY MS. WALKER:

4 Q Do you recognize this?

5 A If I recognize the area?

6 Q Yes.

7 A Yes, ma'am.

8 Q And what is the -- what is that?

9 A The map shows the Sal del Rey National Wildlife Refuge,
10 an aerial view of the Sal del Rey.

11 Q Okay. Okay. Is Sal del Rey a federally classified
12 wildlife refuge?

13 A Yes, ma'am. The Sal del Rey is part of one of the tracts
14 that compose the Lower Rio Grande Valley National Wildlife
15 Refuge, or the South Texas Refuge Complex.

16 Q What county is it in?

17 A This is Hidalgo County.

18 Q Okay. When you work at Sal del Rey what are some of the
19 typical duties that you have there?

20 A Okay. Considering that Sal del Rey National Wildlife
21 Refuge is open to the public, one of my main duties is to make
22 sure that the visitors, you know, are safe in there. There's
23 times of the year where the visitors do a lot of hiking and
24 not being familiar with the land, the topography, the
25 vegetation and the climatic conditions, I conduct a lot of

1 search and rescues in the area. So I patrol the area to make
2 sure that everybody is safe while visiting the lake. And a
3 lot of times at the same time I am conducting, at Sal del Rey
4 in particular since it's open for hunting, I conduct a lot of
5 birds and lot of big game biological service, ma'am.

6 Q On this particular day, October 18 of 2020, what did you
7 do on Sal del Rey?

8 A Like I was just explaining I was conducting my typical
9 patrol on some of the gravel roads --

10 Q Okay.

11 A -- on the borderlands, on the perimeter of Sal del Rey.
12 I noted a wine colored vehicle that was parked in an area that
13 is not designated as a parking spot for the visitors. That
14 road, that entrance, it's a service road for employees of the
15 US Fish and Wildlife. And that was early in the morning.

16 Q Okay. Officer Garcia, are there visitor entrances to Sal
17 del Rey?

18 A Yes.

19 Q How many?

20 A We have two designated areas that are open as parking for
21 the public.

22 MS. WALKER: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 BY MS. WALKER:

25 Q Officer, I'm going to hand you a Sharpie. Could you

1 please mark the visitor area --

2 A The parking area?

3 Q -- the parking areas with an X.

4 A Okay. So we have one on Highway 186, we have another
5 entrance on --

6 THE COURT: Mr. Gonzalez, if you want to get up here
7 and look at what he's marking so that you can see what's going
8 on.

9 MR. GONZALEZ: Yes, Your Honor.

10 BY MS. WALKER:

11 Q And could you please mark with a circle where you
12 observed the vehicle?

13 A (Marks exhibit.)

14 THE COURT: Can you see that?

15 MR. GONZALEZ: Yes, Your Honor.

16 THE WITNESS: Okay. Here, you need this back or --

17 MS. WALKER: (Indiscernible).

18 MR. GONZALEZ: Your Honor, I'm prepared to stipulate
19 at this point that where Mr. -- where the officer encountered
20 Mr. Leal was not in a place designated.

21 THE COURT: Okay.

22 MR. GONZALEZ: I mean, I'm not sure if that's where
23 the Government's going with this.

24 MS. WALKER: Yes.

25 MR. GONZALEZ: Okay.

1 THE COURT: All right.

2 BY MS. WALKER:

3 Q After you first observed the vehicle did you check it
4 again later that day?

5 A Yes, ma'am. Like I was saying, I had conducted a few
6 search and rescues in the area due to heat exhaustion, so I
7 observed the vehicle, I continued with my patrol to the other
8 refuges on the east side of Sal del Rey, and around
9 2:00 o'clock, working (indiscernible) hours, I came back to
10 the area, the same road, Chapa Road, and observed the vehicle
11 in the same spot with nobody around.

12 Q And at that point what did you do next?

13 A Well, considering the circumstances of some of the
14 previous cases I had with some of the visitors, I decided to
15 conduct an internal patrol inside the Sal del Rey to make sure
16 that the owner of the vehicle was safe. I opened the gate, I
17 drove into the Sal del Rey, I closed the gate and as I
18 continued on that road southbound I observed Mr. Leal walking
19 towards my way. He was exiting -- or attempting to exit the
20 refuge.

21 Q Okay.

22 MS. WALKER: Your Honor, may I have continuing
23 permission to approach the witness?

24 THE COURT: Sure.

25 (Pause in the proceedings.)

1 BY MS. WALKER:

2 Q Officer, I'm handing you Government Exhibits 2 and 3.

3 (Government Exhibit Nos. 2 and 3 identified.)

4 BY MS. WALKER:

5 Q Do you recognize those?

6 A Yes, ma'am.

7 Q And --

8 MR. GONZALEZ: No objection, Your Honor.

9 BY MS. WALKER:

10 Q -- could you explain -- could you describe what that
11 shows?

12 A Okay. So this is an image of Mr. Leal as I exited my
13 patrol vehicle. Like I said, I was looking for an individual
14 to make sure that he was safe, that he was not in distress.
15 When I observed Mr. Leal he was -- he had some wood and
16 wildlife bones on his hands and he was carrying a backpack
17 that appeared to be fully saturated with items inside. And
18 also he seemed like to be a little -- his clothing seemed to
19 be -- you know, the temperatures were high that day and he was
20 soaked. I asked him if he was okay; he said, yes, that he was
21 fine, that he had just got in the water at Sal del Rey.

22 Q Okay. And you stated that you had identified this
23 person?

24 A Yes, ma'am.

25 Q Was that through a driver's license?

1 A It was through a driver's license, correct.

2 Q Okay. And who was that identified as?

3 A Eduardo Leal.

4 Q Do you see Eduardo Leal here today?

5 A Yes, ma'am.

6 Q Could you please say something he's wearing?

7 A Eduardo is wearing a black suit with a green tie.

8 MS. WALKER: May the Record reflect he's identified
9 the Defendant?

10 THE COURT: All right. The Record will so reflect.
11 BY MS. WALKER:

12 Q And your testimony is that you observed that he was
13 carrying items to include wood and wildlife bones.

14 A Correct.

15 Q Okay. And he also had a backpack?

16 A Yes, ma'am.

17 Q Did he provide the contents of his backpack to you?

18 A After talking with him for a while he opened the backpack
19 and we were able to see what was in there, yes.

20 MR. GONZALEZ: The Government handed what's been
21 marked as Government's Exhibit 4, and I have no objection,
22 Your Honor.

23 THE COURT: All right.

24 (Government Exhibit No. 4 identified.)

25 BY MS. WALKER:

1 Q I'm handing you Government Exhibit 4. Do you recognize
2 this?

3 A Yes, ma'am.

4 Q And what does this depict?

5 A This is the backpack that he was carrying. I asked Mr.
6 Leal if he'd place all of the wildlife bones and the wood he
7 was carrying, to put it on the gravel road. As he moved to
8 the gravel road I observed a few feathers sticking out of
9 the -- or I observed a feather actually sticking out the
10 backpack. I asked him what he -- if he had any more items
11 that he had collected from the refuge in his backpack, and he
12 said he had all personal belongings.

13 I asked him a second time I needed, you know, what
14 he was carrying in there, if he was actually taking anything
15 else from the refuge. He put down the backpack and as he
16 opened he was in possession of more wood, a little bit more
17 bones, there was a red -- I mean it was green colored box that
18 was -- that had some salt from the lake. There was some
19 crystals, there was a jar containing marijuana, and --

20 MR. GONZALEZ: Objection, Your Honor, relevance.

21 THE WITNESS: -- digging tools.

22 THE COURT: Well, what's the point? He's just
23 saying what's in his backpack.

24 MR. GONZALEZ: Your Honor, I believe this is a trial
25 about what he took that was from the refuge. References to

1 marijuana I don't see the relevance and I think it's unfairly
2 prejudicial.

3 THE COURT: Well, I guess the point is, it's a bench
4 trial, I've already heard it, I can't un-hear it. I mean --

5 MR. GONZALEZ: Understood, Your Honor.

6 THE COURT: -- put it in context of what he's being
7 accused of.

8 THE WITNESS: May I proceed?

9 THE COURT: Yes, go ahead.

10 BY MS. WALKER:

11 Q Did you -- Officer, did you photograph these items?

12 A Yes, I did.

13 Q I'm handing you Government Exhibit 5, Government Exhibit
14 6 and Government Exhibit 7.

15 (Government Exhibit Nos. 5, 6 and 7 identified.)

16 BY MS. WALKER:

17 Q Do you recognize these photographs?

18 A Yes, ma'am. I see the feathers, that he had some in his
19 backpack and some other wood that he pulled from the backpack
20 he was carrying, a digging tool there, bungee cords, and some
21 smoking pipe that he also had in his -- in the backpack.

22 (Pause in the proceedings.)

23 BY MS. WALKER:

24 Q What, if anything, was significant about discovering a
25 digging tool?

1 A What was significant about finding the digging tool?

2 Q Yes.

3 A Well, visitors are not allowed to be taking anything out
4 of the refuge. Mr. Leal said that he was -- he was in the
5 water on the lake on Sal del Rey and he had taken some salt,
6 and we assumed that he utilized that digging tool to get some
7 of that salt that he had in the green box where he had the
8 crystals.

9 Q I'm handing you Government Exhibit 8.

10 (Government Exhibit No. 8 identified.)

11 BY MS. WALKER:

12 Q Do you recognize that?

13 A Yes, ma'am.

14 Q Okay. And what is that?

15 A (Indiscernible) there's a digging tool and that's the
16 digging tool that I got from the backpack.

17 Q Okay. And I'm also handing you Government Exhibit 9.

18 (Government Exhibit No. 9 identified.)

19 BY MS. WALKER:

20 Q Do you recognize that?

21 A Yes, ma'am, this is a picture I took once I got back to
22 my office and I got everything on a table, everything that I
23 collected and seized from Mr. Leal. It includes the 31
24 feathers, the wing, the salt, the box and some of the crystals
25 that he had.

1 THE COURT: Mr. Gonzalez, do you have copies of all
2 these exhibits?

3 MR. GONZALEZ: Yes, Your Honor.

4 THE COURT: All right. Go ahead.

5 BY MS. WALKER:

6 Q And, Officer Garcia, you stated earlier that the
7 Defendant had made statements regarding these items that he
8 took.

9 INTERPRETER LEWIS: Your Honor, the interpreter
10 didn't quite catch the last part of the --

11 THE COURT: All right. Please --

12 INTERPRETER LEWIS: -- the Government's phrase.

13 MS. WALKER: Yes, Your Honor.

14 BY MS. WALKER:

15 Q Officer Garcia, you stated earlier that the Defendant had
16 made statements regarding these items?

17 A Yes. When I made contact with him he explained to me
18 when I first encountered after exiting my vehicle that he was
19 an artist, that he was collecting what he translated to dead
20 wood, *madera muerta*, and that he was going to do some -- that
21 he uses some of that stuff that he collects (indiscernible).

22 Q Are you familiar with the Comprehensive Conservation Plan
23 for Sal del Rey?

24 A Yes.

25 THE COURT: Let me ask, Government, are you

1 admitting Exhibits 1 through 9 in the Record?

2 MS. WALKER: Yes, Your Honor. I was going to move
3 to admit them at the very end.

4 THE COURT: You can do it whenever you want to, I
5 just -- go ahead.

6 (Pause in the proceedings.)

7 BY MS. WALKER:

8 Q Officer Garcia, do you recognize that?

9 A Yes, ma'am. I've seen this document, it's what we call
10 the CCP, the Conservation -- the Comprehensive Conservation
11 Plan.

12 Q Okay. I'm going to draw your attention to Page 6. Could
13 you please, Goal 1?

14 A Page 6, Goal 1, protect biological diversity, land and
15 waters, to restore, enhance and protect the natural diversity
16 of the Lower Rio Grande Valley including threatened and
17 endangered species on and off refuge lands and land
18 acquisition, management of habitat and wildlife resource and
19 refuge lands, strengthening existing and establishing new
20 (indiscernible) efforts.

21 Q And I'm going to draw your attention to Page 7.

22 A Page 7.

23 Q Could you please read Goal 5?

24 A Goal 5, provide compatible wildlife with dependent public
25 uses, recreational opportunities, interpretation and

1 education. Continue to offer the quality -- a quality
2 wildlife observation trial system on the Santa Ana National
3 Wildlife Refuge, offer compatible wildlife-dependent public
4 access in certain tracts of the LRGV National Wildlife Refuge,
5 continue wildlife interpretation and educational efforts at
6 Santa Ana National Wildlife Refuge and initiate interpretive
7 efforts for LRGV, Lower Rio Grande Valley National Wildlife
8 Refuge in coordination with private groups and other
9 jurisdictions.

10 Q Officer Garcia, what is interpretative efforts as
11 outlined in Goal 5, what does that mean?

12 A So one of the activities that is compatible on a
13 national wildlife refuge it's interpretation. So
14 interpretation we have park rangers that bring groups of
15 people and they do presentations on what we have on a
16 particular refuge, in this particular case like all the rain,
17 or like they establish in Santa Ana that are open to the
18 public. They provide a little bit of history, they talk about
19 the habitat, they talk about the wildlife and being informed
20 of these lands and the Lower Rio Grande Valley.

21 Q So essentially it would be park rangers teaching
22 visitors.

23 A That is correct, ma'am.

24 Q Okay. Is there any provision in that Comprehensive
25 Conservation Plan that allows visitors to remove items from

1 Sal del Rey?

2 A No, ma'am.

3 Q Okay. And, in fact, is there any other rule that allows
4 visitors to remove items of Sal del Rey?

5 A No, ma'am, nobody's allowed to take anything.

6 Q So just to be clear, visitors -- are visitors permitted
7 to take items from Sal del Rey?

8 A No, ma'am.

9 Q Not even salt?

10 A No, ma'am.

11 Q Could they take a branch?

12 A No, ma'am. Everything on the wildlife refuge is
13 protected and nobody's supposed to be taking anything.

14 Q Okay. Could they take one feather?

15 A No, ma'am.

16 Q And certainly not over 30 feathers.

17 A No, ma'am.

18 Q Okay. And if someone did take these items, that would be
19 a violation of federal law?

20 A That is correct.

21 Q Okay. And, in fact, in this instance you did cite the
22 Defendant for engaging in such conduct?

23 A Correct.

24 Q Okay.

25 MS. WALKER: May I have a moment, Your Honor?

1 THE COURT: Go ahead.

2 (Pause in the proceedings.)

3 MS. WALKER: Your Honor, may I approach the witness
4 briefly?

5 THE COURT: Yes.

6 (Pause in the proceedings.)

7 BY MS. WALKER:

8 Q Officer, I'm handing you -- well, I'm drawing your
9 attention to Government's Exhibits 6 and 9. And these are the
10 items that you found the Defendant's possession, would that be
11 accurate to say?

12 A Yes, ma'am.

13 Q Okay. And could you just, just for clarification, just
14 provide a summary of what those items were.

15 A So Mr. Leal, when I encountered him, he was in possession
16 of wood, he was in possession of wildlife bones, he was in
17 possession of the digging tool, he was in possession of 31
18 feathers, he was in possession of 7 pipes, the marijuana that
19 was in the jar, he was also in possession of some crystals,
20 rocks and crystals that were located inside the green box, and
21 the salt that he said that he was -- he had collected from the
22 salt lick.

23 THE COURT: Just so I can be clear, are you -- I
24 don't think you're saying this but I just want to make sure
25 I'm clear, he -- you're not saying that he was taking the

1 marijuana off of the reserve with him. Right? It was just --

2 MS. WALKER: Correct, Your Honor, we're not --

3 THE COURT: He wasn't taking it off the reserve, he
4 was -- just had it with him.

5 MS. WALKER: Yes.

6 THE COURT: All right. Go ahead. I just want to
7 make sure that you weren't -- that I wasn't missing something,
8 that that was like the bird feathers, the rocks or something
9 else he was taking from the protected area.

10 MS. WALKER: No, Your Honor. May I have a brief
11 moment, Your Honor?

12 THE COURT: Yes.

13 (Pause in the proceedings.)

14 BY MS. WALKER:

15 Q Officer Garcia, how could taking these items affect the
16 refuge?

17 INTERPRETER LEWIS: Your Honor, can she repeat that?

18 THE COURT: Yeah, please repeat that.

19 MS. WALKER: Yes.

20 BY MS. WALKER:

21 Q Officer Garcia, how could taking these items affect the
22 refuge?

23 A Yeah, so the integrity of the refuge is -- or the main
24 purpose of the refuge, it provides and houses a lot of home
25 for a lot of different animals and different wildlife species

1 to include the habitat. The Sal del Rey in particular, this
2 place, that was established to maintain the migration, you
3 know, it provides home for all these migrating birds that we
4 get every year.

5 The history of this particular place is also -- it
6 was a big part of establishing this refuge, the history of
7 this place when it comes to the salt lick is all the way to
8 when the king from Spain used to collect all this salt and it
9 was transported all the way over there, even by some of our
10 neighbors here in Mexico.

11 Before the NBTA was established there was a lot of
12 people hunting, everybody got guns and everybody was shooting
13 everything that they would see flying. When the NBTA was
14 established it marked the lines for people to really start
15 protecting some of these lands, it created the lands
16 protecting some of these issues.

17 Now that it's a wildlife refuge, since 1992 Sal del
18 Rey was -- that was when it was acquired, it provides a
19 glimpse of -- to the public of what it used to be and why we
20 protect some of these lands that we are protecting under the
21 US Fish and Wildlife. Like I said, this is just one
22 particular spot, or terrain, or land amongst 100 others.
23 We -- Sal del Rey is open to the public, it brings a lot of
24 visitors from all over the country. They want to go see the
25 salt, they want to go see the wildlife, they want to

1 appreciate the history and the culture of the Sal del Rey.
2 And then also it provides an opportunity for people interested
3 in birding, you know, to see all these feathers of migrating
4 birds coming through there when they come into the refuge
5 without actually being engaged in the activity of hunting or
6 take those migrating birds.

7 The Sal del Rey is one of those places that brings
8 people, again, from all over the place. We bring a lot of
9 schools from the community and we educate a lot of kids about
10 the history and habitat of the natural wildlife that we
11 currently have here in South Texas.

12 So the taking of this items, it would be detrimental
13 to the integrity of the refuge as far as the educational
14 purpose for the kids or the future generations, and the take
15 of these items, you know, eventually in the future would
16 definitely cause a significant impact on the habitat of future
17 wildlife in the area passing through or nesting or resting or
18 mating at the Sal del Rey.

19 Q Thank you.

20 A Yes, ma'am.

21 THE COURT: Judge, the Government has no further
22 questions, Your Honor.

23 THE COURT: All right. Mr. Gonzalez?

24 MS. WALKER: We would move --

25 THE COURT: Oh, go --

1 MS. WALKER: We would move to admit Government --
2 all Government Exhibits 1 through 10.

3 THE COURT: Any objection, Mr. Gonzalez?

4 MR. GONZALEZ: No objection, Your Honor.

5 THE COURT: All right. They're admitted.

6 (Government Exhibit Nos. 1 through 10 received in
7 evidence.)

8 MR. GONZALEZ: May I proceed, Your Honor?

9 THE COURT: Yes.

10 CROSS-EXAMINATION OF ROMEO GARCIA

11 BY MR. GONZALEZ:

12 Q Good afternoon, Mr. Garcia -- Officer Garcia. I just
13 have a few questions following up on what you had just
14 mentioned of how the items Mr. Leal took could materially --
15 or could affect the refuge. Mr. Leal never left the refuge
16 with the items, did he?

17 A No.

18 Q So the most we can say that he attempted to take the
19 items.

20 A He mentioned he was going to take some of those items
21 with him as he was walking to his truck, yes.

22 Q And let me ask a few questions about some of the items at
23 least. The salt here, the Sal del Rey is a salt lick, isn't
24 it?

25 A Correct.

1 Q It's estimated to contain four million tons of salt.
2 Isn't that right?

3 A Sure.

4 Q You're not saying that the salt Mr. Leal took had any
5 sort of detrimental affect on sodium levels at the salt lick,
6 are you?

7 A No, sir.

8 Q He was also not coming out with a truck load of wood, was
9 he?

10 A No.

11 Q And you have no evidence that he killed any animals while
12 he was visiting the refuge.

13 A No.

14 MR. GONZALEZ: No further questions, Your Honor.

15 THE COURT: All right. Any follow-up, Government?

16 MS. WALKER: No, Your Honor.

17 THE COURT: All right.

18 (Witness excused.)

19 MS. WALKER: The Government would rest, Your Honor.

20 THE COURT: Do you have a witness?

21 MR. GONZALEZ: No witnesses, Your Honor, no evidence
22 to present.

23 THE COURT: All right. Do you -- I guess it's just
24 left for argument at this point?

25 MR. GONZALEZ: Yes, Your Honor.

1 MS. WALKER: Yes, Your Honor.

2 THE COURT: Go ahead, Government.

3 MS. WALKER: Yes, Your Honor.

4 CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT

5 MS. WALKER: In this case the Government is
6 confident that we have proven beyond a reasonable doubt that
7 the Defendant did commit the charged violation. The law
8 states that, under subsection (c) of 668dd that no person
9 shall disturb, remove or possess any real or personal property
10 of the United States or take or possess any bird or part of
11 within such area. And that is what we have here, Your Honor.

12 We heard testimony from Officer Garcia that on
13 October 18 of last year, 2020, he encountered the Defendant
14 and the Defendant had in his possession wood, wildlife bones,
15 31 feathers, rocks and crystals and salt that he stated that
16 he had taken from Sal del Rey with the intent to use for
17 decoration on his house.

18 It's a pretty simple and straightforward case, Your
19 Honor. The Defendant admitted to it, we have photographs of
20 these items, they are Government's Exhibits 1 through 9. The
21 defense anticipates, as we heard a little bit in their
22 opening, are going to rely on a legal argument and not contest
23 the fact that the Defendant did attempt to take these items.

24 However, it's the Government's position that this
25 legal argument should fail. This is not the legal standard to

1 which this law is held to. When we look --

2 THE COURT: And I don't mean to interrupt you,
3 because I may have broke your train of thought, you may see
4 something very important, but would you please read the
5 statute you were reading into the Record, because the face
6 masks sometimes are muffling and I want to make sure it's
7 clear on the Record so when I go back and hear that I can --
8 when you read that I can look at the statute again.

9 MS. WALKER: Yes, Your Honor. It's 668 -- sorry,
10 it's 16 USC 668dd, subsection (c), which -- would you like me
11 to read the statute again?

12 THE COURT: No, it's fine. I just wanted to make
13 sure --

14 MS. WALKER: Okay. The cite.

15 Now part of the statute under C, which I anticipate
16 defense will argue, states that no person shall take these
17 items unless such activities are authorized either under
18 subsection (d) or by the express provision of a law,
19 proclamation, executive order, or other order. It's the
20 Government's position that there is no unless in this
21 instance, Your Honor.

22 But when we look at subsection (d), subsection (d)
23 permits the use of an area for hunting, fishing, public
24 recreation and accommodations. That is not what this as is
25 about, Your Honor. This case is about the Defendant taking

1 items. This does not fall into hunting, fishing, public
2 recreation and accommodation. So it's our belief that
3 subsection (d) does not apply as a defense here.

4 Now when we look at the Conservation Plan defense is
5 attempting to argue that the Defendant can take these items
6 because they do not materially detract from or interfere with
7 the purposes for which the refuge is established. But that is
8 simply not the standard in this case. That standard is
9 applying to wildlife observation, photography, fishing and
10 hunting recreational opportunities. And again, Your Honor,
11 that's not what this case is about. This case is about the
12 Defendant taking items. This does not fall into any one of
13 those categories.

14 And, Your Honor, it's the same thing with the
15 executive order that the defense referenced earlier. When we
16 look at that executive order, again, it's recognize compatible
17 wildlife-dependent recreational activities involving hunting,
18 fishing, wildlife observation and photography, environmental
19 education and interpretation. None of that allows for the
20 taking of items on the refuge.

21 In fact, Officer Garcia did clarify that there was
22 absolutely no element of the Conservation Plan or any other
23 rule or law that allows visitors to take items from th refuge.
24 Not one feather, certainly not 33 feathers, plus wood, salt,
25 and animal bones. He did state that this is important to

1 enforce because it would lessen the integrity of the refuge,
2 both for the wildlife as well as the visitors.

3 And, Your Honor, the Government is asking that you
4 find this Defendant guilty of taking these items. We do
5 believe that we have met our burden of beyond a reasonable
6 doubt in this case, and that any defense doesn't apply because
7 it's simply not one of the allowable areas here. Thank you.

8 (Pause in the proceedings.)

9 THE COURT: That's it?

10 MS. WALKER: Yes, Your Honor.

11 THE COURT: All right. Mr. Gonzalez?

12 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

13 MR. GONZALEZ: Your Honor, briefly, and I made
14 pretty much all the arguments during the opening about what --
15 this is sort of coming down to an analytical framework here
16 for Your Honor. I think if the Court had a very clear set of
17 laws to follow, the issue would be very easy to determine, did
18 he violate or not. The exhibits that we've introduced for the
19 Court to consider, the defense exhibits, sort of outline the
20 laws and the particular areas of interest for this Court when
21 it's determining whether Mr. Leal committed a violation of the
22 cited section here.

23 I wanted to address -- I guess I'm going to go down
24 the list of the items that Mr. Leal was alleged to have taken,
25 or attempted to take. I'm going to be looking at Defense

1 Exhibit 4, Your Honor. I haven't referenced it yet. The
2 Court may have it, it's in the packet that I tendered.
3 Defense Exhibit 4, Your Honor, and I don't want to take too
4 long here, but I do want to make a point about what regulation
5 this Defense Exhibit 4 is presenting to the Court.

6 It says -- it's Section 3622.4 of this long CFR, as
7 the Court knows, and it provides for the free use of petrified
8 wood, Your Honor. In general the authorized officer is in
9 control regarding the removal without charge of wood on public
10 lands. It cannot exceed a certain number of pounds, in this
11 case 24.

12 There's no evidence the Government presented that
13 indicates that the number of pounds of wood that Mr. Leal had
14 exceeded 24. There also is no evidence to indicate that the
15 wood Mr. Leal had in his hands were regular -- was regular
16 wood rather than petrified wood. And so on that basis we're
17 asking the Court -- if the Court were to find a violation
18 here, I don't think the evidence supports a violation as to
19 wood that he had in his possession.

20 Your Honor, the officer may not have been terribly
21 specific about the items. It was Mr. Leal's rocks, there's
22 been no real testimony that the rocks he had in his box were
23 from the wildlife refuge. There's been an emphasis on the
24 salt, but not the rocks, Your Honor. So if the Court were to
25 find, again, a violation, we contend the evidence does not

1 support it would be on the basis of rocks.

2 Your Honor, the salt -- we're talking about a de
3 minimis amount of salt, and if the Court were to side with our
4 position regarding the analytical framework to be applied, the
5 one that requires the Court to consider whether there was a
6 material disruption of the refuge, our contention is none of
7 the remaining items materially disturbed the wildlife refuge.
8 And on that basis, Your Honor, our position is that the
9 Government's evidence does not establish beyond a reasonable
10 doubt that he -- that a violation under this section occurred.
11 Thank you.

12 THE COURT: Any rebuttal?

13 MS. WALKER: Yes, Your Honor.

14 REBUTTAL ARGUMENT ON BEHALF OF THE GOVERNMENT

15 MS. WALKER: It's again the Government's position
16 that that's simply not the standard. It is not that it
17 materially disturbed the refuge. In fact, the law is no
18 person shall disturb, remove or possess any real or personal
19 property of the United States or take or possess any bird part
20 within such area. It does not require that it be a
21 substantial amount. And the standard in which defense is
22 applying that we find in Defense Exhibit 2, again, is
23 referring to wildlife observation, photography, fishing and
24 hunting. It does not apply to taking items from the refuge.

25 So again, we would just state that that's not the

1 accurate standard to be applying in this instance, and when we
2 look at the law as it is, the Defendant did violate it by
3 removing the items, so it's the United States' position that
4 the Defendant did commit a crime and he should be found guilty
5 in this case because we have produced evidence today for the
6 Court to conclude that beyond a reasonable doubt the Defendant
7 did take the items from the refuge.

8 THE COURT: All right. I'll take the testimony and
9 the arguments under advisement and I'll issue a ruling at a
10 later date.

11 Anything else for the Record, Ms. Walker?

12 MS. WALKER: No, Your Honor.

13 THE COURT: Mr. --

14 MR. GONZALEZ: No, Your Honor.

15 THE COURT: -- Gonzalez?

16 MR. GONZALEZ: Thank you.

17 THE COURT: All right. Everybody can go.
18 (Bench Trial adjourned 4:33 p.m.)
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1 I certify that the foregoing is a correct transcript
2 to the best of my ability produced from the electronic sound
3 recording of the proceedings in the above-entitled matter.

4 /S./ MARY D. HENRY

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